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WENDEROTH, LIND & PONACK, L.L.P.			GABLER, PHILIP FRANCIS	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/829,240

Filing Date: April 22, 2004

Appellant(s): FITZ, HELMUT

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W. Douglas Hahm  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 23 February 2007 appealing from the Office action mailed 20 June 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct. However, Appellant incorrectly asserts that the Fleisch reference (US Patent Number 5895102) has not been listed on a Form 1449 or Form 892 to be made formally

of record. The Fleisch reference was in fact listed on a Form 892 as part of paper number 20060612 mailed 20 June 2006.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

AT004518U1	Vorarlberg	8-2001
5895102	Fleisch	4-1999

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vorarlberg (Austrian Patent Number AT 004518) in view of Fleisch (US Patent Number 5895102). Vorarlberg (Figures 1-3) discloses an extension guide fitting for a drawer, comprising: an extension rail (4) to be attached to a drawer (10); a carrier rail (2) to be attached to a furniture body (9); a middle rail (3) arranged to run between said extension rail and said carrier rail; carriages (5, 6, 7) each having running rollers mounted therein for transmitting a load between said extension rail, said middle rail, and said carrier rail; and a stationary support roller (8) mounted (in member 12) at a front portion of said carrier rail and being arranged so that said extension rail runs on said stationary support roller and is supported by said stationary support roller at least when said extension rail

is in a closed position; but does not disclose a rocker member or multiple stationary support rollers (although he does disclose multiple rollers). The use of rocker members in drawer guides is known in the art however, as shown by Fleisch, who (Figures 2-4) discloses a guide fitting for drawers including a rocker member (24, including 10, etc.) with multiple support rollers (11, 18, 25). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a rocker member and multiple support rollers on Vorarlberg's guide fitting as suggested by Fleisch rather than Vorarlberg's fixed mounting with a single stationary support roller because this arrangement would allow for better support of the drawer as well as better accommodating any slide member irregularities.

2. Regarding claim 11, Vorarlberg, as modified by Fleisch as described above, further discloses stationary support rollers arranged laterally adjacent to said middle rail (as Vorarlberg's support roller is, see Figure 2).
3. Regarding claims 12, 14, and 15, Vorarlberg, as modified by Fleisch as described above, further discloses three stationary support rollers (11, 18, 25 as in Fleisch's figures) mounted in a rocker member and arranged so that a first one (18) of said rollers is located behind a second one (25) of said rollers with respect to a direction of displacement of the drawer, and so that said second one of said rollers is located behind a third one (11) of said rollers with respect to the direction of displacement of the drawer; and said first support roller and said third support roller are mounted on support plates (as in Fleisch's figures, the sides of 10, 24) of said rocker member, and said

second support roller is mounted at a central location on a shaft (rollers would necessarily be mounted on shafts, see Fleisch's Figure 4) of said rocker member.

4. Regarding claim 13, Vorarlberg, further discloses common plates (sides of 12) between which rollers are mounted.

5. Regarding claims 16 and 17, Vorarlberg, further discloses a running limb (11) for contacting and being supported by a roller, wherein said running limb extends from a side limb (side of 4 adjacent to member 11) of said extension rail so as to project toward and inside of said extension rail.

6. Regarding claim 18, Vorarlberg, as modified by Fleisch as described above, discloses a furniture piece comprising a drawer (10 of Vorarlberg); a furniture body (9 of Vorarlberg) in which said drawer is fitted; and a first extension guide fitting including: an extension rail attached to the drawer, a carrier rail attached to the furniture body, and a middle rail, carriages, a rocker member and support rollers as described above. A second extension guide fitting is not explicitly disclosed, however, such is inherent and necessary for proper operation of the drawer within the furniture.

#### **(10) Response to Argument**

Appellant's arguments filed with his appeal brief of 23 February 2007 have been reviewed but are not considered persuasive for the following reasons. As explained in the above rejections, Vorarlberg discloses a furniture piece and extension guide fitting for a drawer as claimed with the exception of a rocker member with multiple stationary support rollers. The Fleisch reference discloses a guide fitting for drawers having a

rocker member with multiple stationary support rollers. It is maintained that it would have been obvious to apply the teachings of Fleisch to the Vorarlberg reference by incorporating a rocker member with multiple stationary support rollers at Vorarlberg's single support roller to better support the drawer and accommodate any slide member irregularities as set forth in the above rejection. Contrary to Appellant's arguments, it has not been suggested that the Fleisch reference discloses a rocker member at a front portion of a carrier rail, only that it discloses a rocker member in use in a drawer guide fitting generally. The Vorarlberg reference discloses a support roller and housing at the front portion of its carrier rail supporting the extension rail in a closed position meeting this limitation. All claim limitations are believed to be disclosed by the references cited and, in an effort to more clearly display this, elements corresponding to the various claim limitations have been diagrammed in the table below.

	Claim Limitation	Appellant's Reference Number [Specification page number]	Prior Art Reference Number (see AT004518U1 to Vorarlberg)
Claim 1 Limitations	Extension rail	4 [3]	4
	Carrier rail	2 [3]	2
	Middle rail	3 [3]	3
	Carriages	5 [3]	5, 6, 7
	Rocker member	14 [3]	Fleisch's elements 24, etc. at Vorarlberg's element 12
	Support rollers	8 [3]	Fleisch's elements 11, 18, and 25 at Vorarlberg's element 8
Additional Limitations for Claim 18	Drawer	10 [3]	10
	Furniture body	Undesignated, see Fig. 3	9
	Second guide fitting	Not shown	Not shown, but inherent for proper function

Appellant further asserts that the prior art references cannot be combined as suggested in the rejection based on a lack of motivation and a change in the principle of operation of the Fleisch reference. The motivation for combining the references as suggested was clearly stated in the rejection as allowing for better support of the drawer (with multiple rollers rather than a single roller) as well as better accommodating any slide member irregularities (via a pivoting housing for the rollers: a rocker member). This is considered adequate motivation for combining the teachings of Fleisch with the device of Vorarlberg. As to a change in principle of operation, while it is acknowledged that the rocker member of Fleisch would operate in a slightly different manner at the

front of Vorarlberg's device as opposed to the rear of Fleisch's device (though still serving its basic function of supporting and guiding a sliding drawer), the principle of operation of the Vorarlberg device would in no way be changed. As Appellant points out, a proposed modification may not be obvious if it changes the principle of operation of the prior art invention being modified. This is simply not the case however, as the principle of operation of the invention being modified (Vorarlberg) is not changed by the modification, and Appellant's arguments regarding the operation of the Fleisch reference are accordingly irrelevant.

In summary, Appellant contends that the combination of Vorarlberg and Fleisch fails to disclose all of the limitations of independent claims 10 and 18, and that the proposed combination cannot be made in the first place. As explained above, it is the examiner's opinion that the combination of Vorarlberg and Fleisch clearly meets each and every limitation set forth in the claims, and that the combination is indeed proper.

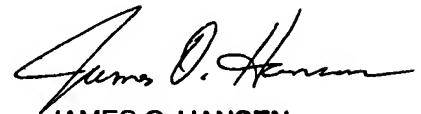
**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Philip Gabler *PG*



JAMES O. HANSEN  
PRIMARY EXAMINER

Conferees:

Lanna Mai *LM*

Meredith Petravick *MP*